

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

PETER ERIKSEN, a single man, )  
Plaintiff, ) NO. CV-03-0126-LRS  
-vs- ) ORDER DENYING PLAINTIFF'S  
CHELAN COUNTY, a municipal ) MOTION FOR RELIEF FROM  
corporation; GRANT COUNTY, a ) JUDGMENT  
municipal corporation; HANSEN )  
LAW FIRM; HANSEN AND MIDDLETON )  
PLLC; TOM MIDDLETON; AGENTS 1- )  
12, )  
Defendants. )

---

Pending before the court is Plaintiff's Motion For Order to Vacate Dismissal (Ct. Rec. 72), filed August 8, 2005. Plaintiff, additionally demands oral argument on October 20, 2005 at 2:30 p.m. Plaintiff asks the court for an order vacating the order<sup>1</sup> and Judgment entered on August 6, 2004.

**DISCUSSION**

---

<sup>1</sup>The order granted Grant County's motion for partial summary judgment, granted Hansen Law Firm, Hansen and Middleton PLLC, and Tom Middleton's motion for summary judgment, and denied plaintiff's motion to continue, and plaintiff's motion to exclude evidence (Ct. Rec. 57, filed August 6, 2004).

1       The court construes plaintiff's motion as a motion for relief of  
2 judgment or order pursuant to Federal Rules of Civil Procedure Rule  
3 60(b). Rule 60 (b) reads, in pertinent part:

4                  Rule 60. Relief From Judgment or Order  
5                  (b) Mistakes; Inadvertence; Excusable Neglect; Newly  
6                  Discovered Evidence; Fraud, Etc. On motion and upon  
7                  such terms as are just, the court may relieve a party  
8                  or a party's legal representative from a final  
9                  judgment, order, or proceeding for the following  
10                 reasons: (1) mistake, inadvertence, surprise, or  
11                 excusable neglect; (2) newly discovered evidence which  
12                 by due diligence could not have been discovered in time  
13                 to move for a new trial under Rule 59(b); (3) fraud  
14                 (whether heretofore denominated intrinsic or  
15                 extrinsic), misrepresentation, or other misconduct of  
16                 an adverse party; (4) the judgment is void; (5) the  
17                 judgment has been satisfied, released, or discharged,  
18                 or a prior judgment upon which it is based has been  
19                 reversed or otherwise vacated, or it is no longer  
20                 equitable that the judgment should have prospective  
21                 application; or (6) any other reason justifying relief  
22                 from the operation of the judgment. The motion shall be  
23                 made within a reasonable time, and for reasons (1),  
24                 (2), and (3) not more than one year after the judgment,  
25                 order, or proceeding was entered or taken. A motion  
26                 under this subdivision (b) does not affect the finality  
27                 of a judgment or suspend its operation. This rule does  
28                 not limit the power of a court to entertain an  
independent action to relieve a party from a judgment,  
order, or proceeding, or to grant relief to a defendant  
not actually personally notified as provided in Title  
28, U.S.C., § 1655, or to set aside a judgment for  
fraud upon the court. Writs of coram nobis, coram  
vobis, audita querela, and bills of review and bills in  
the nature of a bill of review, are abolished, and the  
procedure for obtaining any relief from a judgment  
shall be by motion as prescribed in these rules or by  
an independent action.

22       Plaintiff argues that there are genuine issues of material facts which  
23       were erroneously decided on summary judgment without a jury. Ct. Rec.  
24  
73.

25       The court issued an Order Denying Plaintiff's Motion for  
26 Reconsideration on October 5, 2004 (Ct. Rec. 71). Pursuant to the  
27  
28

1 Federal Rules of Civil Procedure, Rule 60(b), plaintiff was required to  
2 file this motion by August 6, 2005, to be considered timely.

3 As a threshold condition to any relief under the Rule, Plaintiff must  
4 assume the burden of showing a meritorious defense or claim. *Compton v.*  
5 *Alton Steamship Co.*, 608 F.2d 96, 102 (4th Cir.1979) (citations omitted).  
6 Here, the Court entered judgment against Plaintiff because he failed to  
7 prove that any official policy or custom was the source of the alleged  
8 constitutional violation. Further, pursuant to 28 U.S.C. §1367(c)(3),  
9 the court declined to exercise supplemental jurisdiction over Plaintiff's  
10 state law claims. As such, Plaintiff's state law claims were dismissed  
11 without prejudice in Ct. Rec. 57.

12 The court on October 5, 2004, denied Plaintiff's motion for  
13 reconsideration in Ct. Rec. 71, based on Plaintiff's failure to  
14 successfully argue that there had been a change of controlling law, or  
15 that new evidence was available.

16 In the current motion under Rule 60(b), Plaintiff has not demonstrated  
17 any errors in the previous ruling(s) nor has he raised any other reason  
18 justifying relief from the operation of the judgment. Plaintiff states  
19 that the court decided many genuine issues of material facts, which facts  
20 were allegedly not true, and should have been presented to a jury in  
21 violation of Plaintiff's due process rights. Ct. Rec. 73, at 1.

22 Rule 60(b) provides for extraordinary relief and is only to be invoked  
23 upon a showing of exceptional circumstances. *Ackermann v. United States*,  
24 340 U.S. 193, 199-201, 71 S.Ct. 209, 212-13, 95 L.Ed. 207 (1950); *Boyd*  
25 v. *Bulala*, 905 F.2d 764, 769 (4th Cir.1990). Plaintiff's arguments do  
26 not rise to a showing of "exceptional circumstances" and appear to be  
27 arguments that could have been raised earlier.

28

Regarding Plaintiff's demand for oral argument on this motion, the court may in its discretion under Local Rule 7.1(h)(3), determine that oral argument is not warranted and proceed to determine any motion brought under this rule without oral presentation. The court is not persuaded that oral presentation is necessary for the motion before it.

The Court has reviewed the file, pending Motion, and briefing thereon, and is fully informed.

Accordingly,

**IT IS ORDERED** that Plaintiff's Motion For Order to Vacate Dismissal, Ct. Rec. 72, filed August 8, 2005 and demand for oral argument is **DENIED** and the file shall remain **CLOSED**. The oral argument set for October 20, 2005 at 2:30 p.m. is **STRICKEN**.

The District Court Executive is directed to file this Order and provide copies to counsel of record and Plaintiff.

**DATED** this 5th day of October, 2005.

*s/Lonny R. Suko*

LONNY R. SUKO  
UNITED STATES DISTRICT JUDGE